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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES INVESTOR PROTECTION	:	Adv. Pro. No. 08-01789 (BRL)
CORPORATION,	:	
	:	
Plaintiff,	:	SIPA Liquidation
	:	
v.	:	(Substantively Consolidated)
	:	
BERNARD L. MADOFF INVESTMENT	:	
SECURITIES LLC	:	
	:	
Defendant.	:	
-----	X	
In re	:	
	:	
BERNARD L. MADOFF,	:	
	:	
Debtor.	:	
-----	X	

OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM

Don H. Rimsky ("Rimsky"), by his undersigned attorneys, objects to the Notice of Trustee's Determination of Claim, dated April 14, 2010 (the "Determination Letter"), and respectfully represents as follows:

Background

1. Rimsky is a "customer" as defined by the Securities Investor Protection Act of 1970 ("SIPA") of Bernard L. Madoff Investment Securities, LLC ("BLMIS").

2. On December 11, 2008, the above-captioned liquidation proceeding was

commenced against BLMIS, pursuant to SIPA. See Order, Securities and Exchange Commission v. Madoff, No. 08-10791 (S.D.N.Y. Dec. 15, 2008) (ordering relief under SIPA and transferring proceeding to the United States Bankruptcy Court for the Southern District of New York) [Docket No. 4]. Irving Picard was appointed Trustee (the “SIPC Trustee”), charged with overseeing the liquidation of BLMIS and processing customer claims pursuant to SIPA. Id.; 15 U.S.C. § 78fff-1(a).

3. On December 23, 2008, this Court entered an Order directing the SIPC Trustee to disseminate notice and claim forms to BLMIS customers and setting forth claims filing deadlines (the “Claims Procedures Order”) [Docket No. 12].

4. Rimsky submitted a claim in accordance with the Claims Procedures Order which claim has been designated Claim Number 014281 (the “Claim”) by the SIPC Trustee.

5. On April 14, 2010, the SIPC Trustee sent Rimsky the Determination Letter denying the Claim.

Grounds for Objection

6. First Objection. The SIPC Trustee determined the Claim by adjusting two transfers made into Rimsky’s account on January 4, 1993, in the aggregate amount of \$365,188.68, to \$300,000. The SIPC Trustee gave Rimsky only partial credit for the \$365,188.68 inter-account transfers (the “Transfers”) from affiliated BLMIS investors (the “Transferors”), on the ground that “the transferor account did not have sufficient principal available to effectuate the full transfer.” Determination Letter at p. 2. This is not a valid basis to fail to credit Rimsky for the full amount of the Transfers. The Transfers were, in economic substance, cash transfers – no different than if the Transferors had withdrawn \$365,188.68 from their BLMIS accounts and transferred the proceeds of the withdrawals to Rimsky, who in turn

made a \$365,188.68 cash deposit into his own BLMIS account. The Transfers should be treated as the \$365,188.68 deposit that they were.

7. Second Objection. In issuing the Determination Letter, the SIPC Trustee assumes that BLMIS never earned any actual profits and therefore all gains reported to customers were “fictitious”. The SIPC Trustee has failed to establish either when the Ponzi scheme began or that BLMIS never earned any amounts to support customer gains. Absent such proof, the Transfers cannot be reduced as alleged by the SIPC Trustee when determining the allowed amount of the Claim.

Relief Requested

For the reasons set forth above, the Bankruptcy Court should allow the Claim in its entirety, and grant such other relief as may be just and equitable.

Dated: New York, New York
May 5, 2010

KRAMER LEVIN NAFTALIS & FRANKEL LLP

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